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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 780.

EMMA MAE REELEY, CLAIMANT,
Petitioner,

against

THE PENNSYLVANIA RAILROAD COMPANY,
EMPLOYER AND SELF-INSURER,
Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Short Statement.

In this case, Petitioner seeks a Writ of Certiorari from a unanimous decision of the Court of Appeals of Maryland, which held that a Pennsylvania Railroad Company freight brakeman transporting ore between the states of Pennsylvania and Maryland was engaged in interstate commerce. Freight Brakeman Reeley was killed during his tour of duty while returning for storage the locomotive and tender used in the interstate journey. Under

the circumstances, the Maryland Appellate Court properly denied a claim for compensation filed under the State Compensation Acts.

Facts.

The essential facts of this case are simple and uncontradicted. Said facts are succinctly set forth in the opinion of the Maryland Court of Appeals (R. 175, etc.), 16 Atl. 2d 904, beginning at page 909.

The material facts are as follows: George A. Reeley was a freight brakeman employed by The Pennsylvania Railroad Company. On the morning of November 21, 1937, he left Harrisburg, Pennsylvania, with road locomotive No. 6733 and sixty-three loaded cars of ore, all destined and billed to Canton Piers, Baltimore, Maryland. Attached to the train was also a tender and a cabin car or caboose. The train crew consisted of Conductor Hudson, Engineman Lambie, Fireman Morgan, Flagman Arnold and Brakeman Reeley. En route, one car was set off for repairs and the remaining sixty-two continued on to Baltimore with the same crew throughout the run.

The first station or yard on the route of the freight train into Baltimore is Bay View, the second is Highland Yard (distance approximately one mile from Bay View) and the third is Canton Yard (distance approximately one-half mile from Highland Yard). From the Canton Yard to the ore piers at Canton is approximately a mile. The train reached Bay View about 4.10 p. m. and Highland Yard about 4.45 p. m. on the same day. The cabin car or caboose was cut off at Highland Yard and left with Conductor Hudson and Flagman Arnold. The road locomotive, tender and sixty-two cars then proceeded to

Canton Yard with the remainder of the crew, including Brakeman Reeley, who was in charge. At Canton Yard, the road locomotive was detached from the sixty-two freight cars because its size was such that it could not continue with the train to the Canton ore piers and a yard engine, with another crew, was attached to the draft to move it to its destination. The road locomotive and tender, in charge of Brakeman Reeley, then started a reverse movement for the purpose of picking up the cabin car and the complement of the crew and then moving on to Bay View where the cabin car would be placed on the cabin track and the locomotive on the storage track, after which the crew would turn in their reports and sign off, whereupon their pay for the trip would cease. This was the customary and normal operation (R. 10, 87).

About the time the crew reached Bay View on the return journey and before marking off, it was discovered that Reeley was missing. A search resulted in the finding of his body on the return track between Highland Yard and Canton Yard, several hundred feet south of the point where the cabin car had been left. Reeley was seen to board the locomotive at Canton before its return movement so he was undoubtedly run over by his locomotive just before the coupling to the cabin car was made. This point was within a mile of where his tour of duty ended.

All the railroad records, including the wheel report (R. 13), waybills for each car (R. 21, 97) and time sheets (R. 99 to 108), showing that the entire transaction was interstate, were produced. The claimant produced no witnesses to contradict or dispute these records or the testimony of the train crew and railroad employees, who were in agreement on all phases of the case.

ARGUMENT.

Employment in Interstate Transportation does not end until an employee has completely disassociated himself therefrom.

Under the facts in this case, it is apparent that Brakeman Reeley at the time of his death "was then engaged in interstate transportation or in work so closely related to it as to be practically a part of it", which is the recognized test laid down by this Court. *Chicago & N. W. R. R. Co. v. Bolle*, 284 U. S. 74, at 78, 76 L. Ed. 173, 52 S. C. 59.

The learned opinion of the Court of Appeals written by His Honor Judge Parke (R. 175), 16 Atl. 2d 904, at 909, is not in entire accord with the decisions of this Honorable Court but with the Appellate Courts throughout the Country.

In the case of *Erie R. R. v. Winfield*, 244 U. S. 170, 61 L. Ed. 1057, this Court held to be engaged in interstate commerce a railroad employee one step further removed from interstate transportation than Reeley. Brakeman Reeley was killed while he was returning for storage an engine and tender used to transport an interstate shipment. At the time of his injury, he had not concluded his tour of duty or work for the day.

Winfield had taken his engine to the place where it was to remain for the night and had concluded his work for the day. He was struck and killed by another engine while crossing over certain tracks when leaving the railroad yard. This Court in holding that Winfield was engaged in interstate commerce said:

> "In leaving the carrier's yard at the close of his day's work, the deceased was but discharging a duty

of his employment. See *N. C. R. Co. v. Zachary*, 232 U. S. 248, 260. Like his trip through the yard to his engine in the morning, it was a necessary incident of his day's work and partook of the character of that work as a whole, for it was no more an incident of one part than of another. His day's work was in both interstate and intrastate commerce, and so when he was leaving the yard at the time of the injury, his employment was in both. That he was employed in interstate commerce is therefore plain, and that his employment also extended to intrastate commerce is for the present purposes of no importance.

". . . By the Federal Act, the entire subject, as respects carriers by railroads and their employees in interstate commerce was taken without the reach of state laws."

Likewise, in the case of *New York Cent. R. R. Co. v. Marcone*, 281 U. S. 345, 74 L. Ed. 892, 50 Sup. Ct. 294, this Court held that a round-house employee employed in working upon engines used in hauling interstate trains was engaged in interstate commerce under the provisions of the Federal Employers Liability Act although the employee may have completed his work on the engine shortly before his death.

Mr. Justice Stone, who delivered the opinion of the Court, said:

"But if we assume that he had completed the work a few minutes before his death, he was still on duty. His presence on the premises was so closely associated with his employment in interstate commerce as to be an incident of it as to entitle him to the benefits of the Employers Liability Act."

Obviously, a railroad employee such as Brakeman Reeley, employed in the movement and transportation

of interstate shipments, was more closely engaged in interstate transportation than a shop employee whose sole duty was to lubricate the railroad equipment.

St. Louis and Santa Fe Ry. Co. v. Seale, 229 U. S. 156, 57 L. Ed. 1129:

> "Whether they were going further or were to stop at that station, it still was necessary that the train be broken up and the cars taken to the appropriate tracks for making up outgoing trains or for unloading or delivering freight, and this was as much a part of the interstate transportation as was the movement across the state line."

See also:

N. Car. R. R. Co. v. Zachary, 232 U. S. 248.

The Maryland Court's opinion is supported by the great weight of authority.

15 Corpus Juris Sec., Commerce, page 349, Sec. 51:

> "Employment in interstate transportation begins when a workman on a carrier's premises makes a forward move to serve in that traffic or employment and ends only after he has completely disassociated himself therefrom."

Roberts Federal Liability of Carriers, Vol. 2, 2nd Ed., Sec. 745:

> "A switching movement which constitutes the last lapse of an interstate journey is a part of interstate transportation and employees engaged therein are under the Federal Act."

Anderson v. Director General of Railroads, 94 N. J. L. 421, 110 Atl. 829. In this case, the decedent was a conductor of a freight train and on the day of the accident had brought his train, which contained interstate com-

merce, to its destination but he had yet to deliver his reports to the yard master. On the way to the yard master's office, he boarded an engine and was killed when it collided with another engine. The Court said:

> "Although it is conceded that Anderson while in charge of the train was employed by the defendant in interstate commerce, the contention is that he ceased to be so employed as soon as he left it. But this suggestion is without merit for his duty with relation to the subject matter of transportation was not ended until he had turned over his records to the yard master; and the mere fact that he had left the train in the performance of that duty did not at all change the character of his employment."

Garber v. Missouri Pac. Ry. Co., 210 S. W. (Mo.) 377. In this case, the deceased husband, a locomotive fireman, had completed an interstate journey. The engine had been uncoupled from the train containing interstate commerce and was being placed by the train crew, including the deceased, on a storage track belonging to and used by the defendant in connection with its business as a common carrier, when he was killed. The Court held that Garber was engaged in interstate commerce and that there could be no recovery under the state law.

See also *Thomas v. The Pa. R. R.*, 162 Md. 509, 160 Atl. 793; *O'Neill v. Erie R. R.*, 169 N. Y. Supp. 1008; *Ches. & Ohio R. R. v. Kornhoff*, 167 Ky. 355, 180 S. W. 523; *Callahan v. Boston & M. R. Co.*, 79 N. H. 173, 106 Atl. 37; *Pipal v. Grand Trunk Western R. Co.*, 173 N. E. (Ill.) 372; *Patterson v. The Pa. R. R. Co.*, 284 Pa. 577, 131 Atl. 484, cert. den. 270 U. S. 649; *Wabash Ry. Co. v. Whitcomb*, 154 N. E. (Ind.) 885; *Richter v. Chic. M. & St. P. Ry. Co.*, 186 N. W. (Wis.) 616.

Relief in this case was asserted under the provisions of the Maryland Workmen's Compensation Act (Art. 101, Annotated Code of Maryland). The provisions of the Federal Employers Liability Act (35 Stat. 65; U. S. C. Tit. 45, Sec. 51, et seq.) were not therefore directly involved. The applicable Maryland Statute provides, Art. 101, Sec. 44, Annotated Code of Maryland, 1939 Ed.:

> "The provisions of this Act shall apply to employers and employees engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been established by the Congress of the United States. *only to the extent that their mutual connection with the intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce. . . .*" (Italics ours.)

After a full hearing, the State Industrial Accident Commission disallowed the compensation claim of Petitioner (R. 82). As the decision of the State Industrial Accident Commission was in favor of the employer, the statutory burden of proof on appeal to the Superior Court of Baltimore City was upon the claimant as the Maryland Compensation Statute provides, Art. 101, Sec. 70, Annotated Code of Maryland, 1939 Ed.:

> ". . . In all court proceedings under or pursuant to this Article, the decision of the Commission shall be prima facie correct and the burden of proof shall be upon the party attacking the same."

The Nisi Prius Court in submitting the question to the jury recognized this Section of the Compensation Statute in granting Respondent's Second Prayer (R. 144).

On appeal, the Court of Appeals of Maryland reversed the jury's finding and said:

(R. 178) "On consideration, it is obvious that every operation of the crew of the freight train after the yard engine was coupled to the line of freight cars was caused by their interstate transportation and in direct and proximate relation to it . . ."

(R. 180) "Thus, the service in which the brakeman had been and was employed at the time was primarily in the forwarding of interstate commerce and that the mode of this connected service at the time of the accident was a reasonable incident or contingency of the completeness of the service." (Citing numerous cases.)

Facts concerning employment not in controversy and therefore the question of Interstate Commerce properly determined by the Court.

The material facts in this case are uncontradicted and undisputed and show conclusively that Reeley (1) on November 21, 1937 was a member of the train crew moving in interstate commerce between Harrisburg, Pennsylvania, and Baltimore, Maryland; (2) that he, with other members of the crew, delivered the sixty-two cars of ore at Canton shortly after 5.00 p. m.; (3) that he met his death while returning to the storage track the same locomotive and tender used on the interstate trip; (4) that at the time of the accident, his tour of duty had not terminated, the train records had not been delivered nor was he permitted to sign off until this work was completed (R. 30, 38, 88, 91, 92, 93, 110, 143); (5) that Reeley, as well as the other crew members, was paid for his time until signing off at Bay View and had been paid on this basis for years (R. 144 and see time sheets R. 99 and 105); (6) that the return movement was the customary and normal operation (R. 10, 40, 87, 176).

Petitioner in her brief attempts to put a strained construction on the words "extra train". An extra train,

as shown by the testimony, means nothing more than that the freight train did not travel on regular schedule (R. 36) and is of no significance in the determination of the present inquiry.

It is well established that where the essential facts concerning employment are not in controversy, the question of interstate commerce should be determined by the court. *Philadelphia & Reading R. Co. v. Hancock*, 253 U. S. 284, 64 L. Ed. 907, 40 S. C. 512; *New York C. R. Co. v. Porter*, 249 U. S. 168, 169, 63 L. Ed. 537; *Young v. Chic. R. R. Co.*, 20 N. E. 2d 320, 299 Ill. App. 393; *Dunkell v. The Pa. R. R. Co.*, 106 Pa. S. 356, 163 Atl. 70, cert. den. 289 U. S. 727, 53 S. C. 527; *Elder v. Pa. R. R. Co.*, 118 Pa. Sup. 137, 180 Atl. 183; *Thomas v. The Pa. R. R. Co., supra; Graber v. Duluth S. S. & A. Ry.*, 150 Wis. 414, 150 N. W. 489.

CONCLUSION.

In conclusion, it is submitted that the Petition for a Writ of Certiorari should be denied because (a) the unanimous opinion of the Court of Appeals of Maryland is in accord with the applicable decisions of this Court; (b) no clear or palpable error is set forth in the Petition for Writ of Certiorari; (c) Petitioner's brief does not comply with Rule 38 of this Honorable Court in that said brief is not direct and concise; (d) that there is no special or important reason for the granting of a Writ of Certiorari.

Respectfully submitted,

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